



**DEPARTMENT OF DEFENSE  
OFFICE OF FREEDOM OF INFORMATION  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155**

Ref: 14-F-0005

Mr. Jason Smathers  
MuckRock News  
DEPT MR 6750  
PO Box 55819  
Boston, MA 02205-5819

Dear Mr. Smathers:

This is a follow up to our interim response dated October 22, 2013, with regard to your September 27, 2013, Freedom of Information Act (FOIA) request (copy enclosed) received on September 30, 2013, and assigned FOIA case number 14-F-0005.

You have also requested a waiver of both search and duplication fees pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II) and (a)(4)(A)(iii) as a member of the news media. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives in the news media would normally qualify as individuals primarily engaged in disseminating information.

It has been determined that you do not qualify as a representative of the news media. You have been placed in the "other" category, which affords you two hours of search time and 100 pages of duplication free of charge.

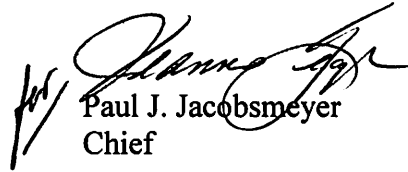
Decisions to waive or reduce fees are made on a case-by-case basis and cannot be made until a search for responsive records has been conducted and the volume and nature of any responsive records have been determined. You have stated that you are willing to pay \$50 in the event that a waiver is denied. Your search will be limited to four hours, two of which you are entitled to as an "other" category requester, and a fee waiver decision will be based on the results of that four hour search. As requested, we will contact you if the search is expected to exceed four hours.

As previously stated, at this time, we are unable to make a release determination on your request within the 20-day statutory time period as there are unusual circumstances which impact our ability to quickly process your request. These unusual circumstances are: (a) the need to search for and collect records from several offices geographically separated from this Office and (b) the need to consult with one or more agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. For these reasons, your request has been placed in our complex processing queue and it will be worked in the order the request was received. As a matter of information, our current administrative workload is

approximately 1,400 open requests. I apologize for the anticipated delay in responding to your request; your continued patience is appreciated.

If you are not satisfied with this action, you may appeal to the appellate authority, the Director of Administration and Management, Office of the Secretary of Defense. To submit your appeal, you should write directly to the Defense Freedom of Information Policy Office, ATTN: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20101-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite to case number 13-F-1443, and should be clearly marked "Freedom of Information Act Appeal".

Sincerely,



Paul J. Jacobsmeyer  
Chief

Enclosure:  
As stated

14-F-0005

OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
1155 Defense Pentagon  
Washington, DC 20301-1155

September 17, 2013

To Whom It May Concern:

This is a request under the Freedom of Information Act. I hereby request the following records:

This FOIA request is for records under control of the office of the secretary of defense. I have sent separate requests to the US Marines. This request is specifically for OSD controlled records (without regard to their origin).

Under the FOIA, I request a copy of all records on, about or mentioning Ergun Caner (aka Ergun Michael Caner, aka Butch Caner, aka Ergun Mehmet Caner, aka E Michael Caner).

To help you understand why the office of secretary of defense would maintain such records and where they may be, I offer the following:

- (a) On or around April 15, 2005, Ergun Caner provided training to Marine Aircraft Group-29, New River Air Station, North Carolina. In this training Caner represented himself as a person who was raised as a Muslim in Turkey and trained to hate Americans. Under this guise, Caner gave cultural training that went as far as advising the Marines on how to determine whether an Arab Muslim is friendly or hostile based on dress and gestures. However, the truth has since been revealed that Caner was born in Sweden and moved to Ohio at age two and was raised by his Swedish mother following a divorce of his parents. It is reasonable that the OSD would become aware of a fraud being committed against the USMC and hold records concerning it.
- (b) Media inquiries have been made to the Marines concerning this event. It is reasonable to assume that the OSD has been involved to give guidance on how to respond to the press and perhaps an investigation into the danger the troops were placed in for receiving faulty training.
- (c) The US Marines released a copy of the video of this training under HQMC-201000446. It is possible that the OSD was involved in determining if this should be released or at least was advised of a significant FOIA release.
- (d) Ergun Caner is now suing for copyright infringement for the posting of the responsive records released by the USMC under HQMC-201000446. Thus, Caner is accusing the USMC of violating his copyright by releasing this video. It is reasonable to assume that the OSD has been informed of this and has considered the copyright status of this video and has considered the liability of the US Government (if any) for releasing the video. Thus, it is reasonable to expect the OSD to maintain records concerning the copyright status of the video and related topics.
- (e) In more recent FOIA requests, the Marines have not released the same video released in 2010, citing computer failure as the possible reason for the USMC no longer having responsive records. It is reasonable to assume that the OSD would be aware of intentionally embarrassing records being deleted by the very USMC office which would potentially be embarrassed by the record.
- (f) It is reasonable that any of the above may have been included in a CMC monthly report which I would expect the OSD to keep copies of, further, the same can be said for many other regular reports from Marine Aircraft Group-29 up through the chain of command which includes the Secretary of Defense.



(g) The fact that many other embarrassing records were never found in response to FOIA requests such as the individuals who recommended Caner, hired Caner, the contracts with Caner, etc. is highly suspicious. It is reasonable to believe that an authority such as the OSD would investigate this matter.

I authorize fees up to \$50. If fees are expected to surpass this amount, please let me know before incurring them to allow me an opportunity to agree to higher fees or to narrow my request.

Although I make requests in various capacities, this particular request is being made as a news media requester.

I have a track record of being able to take raw materials released under the FOIA and turning them into a unique work using my editorial skills. For a related example, please see the article titled United States Marines duped by pretend jihadist, Ergun Caner, which is available online ( <http://www.witnessesuntome.com/2010/08/united-states-marines-duped-by-pretend-jihadist-ergun-caner/> ).

Witnesses Unto Me will be publishing the work created based on the results of this FOIA requests. My numerous works published with Witnesses Unto Me demonstrates my ability to distribute my work to an audience made up of the general public.

The material requested is the subject of current news, it is of current interest to the public. This can be demonstrated by the media attention which this issue has recently received. For example, in July of this year, Janet Mefferd discussed the issue on nationally syndicated radio. The Week published a story on July 22, 2013. Associated Baptist Press has written a series of articles on the subject. Tech Dirt covered the story on June 26th, 2013. The Virginia Coalition for Open Government printed an abstract of the article by The Week amid their list of open government news issues.

Just as a major newspaper would contain editorials, funny pages, and advertisements along side of the news, Witnesses Unto Me also publishes a variety of types of material. Similarly, writers whom are published in major newspapers are considered news media for the purposes of FOIA, this request should also be billed as a news media request. Again, the responsive records will be turned into a unique work product using my editorial skills and published as a news piece on Witnesses Unto Me.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Jason Smathers

Filed via MuckRock.com

E-mail (Preferred): [6750-48558612@requests.muckrock.com](mailto:6750-48558612@requests.muckrock.com)

For mailed responses, please address (see note):

MuckRock News

DEPT MR 6750

PO Box 55819

Boston, MA 02205-5819

PLEASE NOTE the new address as well as the fact that improperly addressed (i.e., with the requester's name rather than MuckRock News) requests might be returned by the USPS as undeliverable.